IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
DEC 01 2006
Michael N. Milby, Clerk

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| AVA SLAUGHTER<br><br>Plaintiff, | §<br>§<br>§<br>§ | |
| v. | §<br>§ | CIVIL ACTION NO. H-05-3455 |
| JONES DAY,<br><br>Defendant. | §<br>§<br>§ | |

**PLAINTIFF SLAUGHTER'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

Ava Slaughter, plaintiff, opposes the motion for summary judgment filed by Jones Day.

**1.**

**The Sole African American Was Demoted**

Jones Day omits important facts in its attempt to conceal its discriminatory intent. The hundreds of pages of documents submitted by Jones Day fail to mention that Ms. Slaughter was the **only** minority GIS Manager from the time Jones Day took over her previous law firm until November of 2004. She had served in the position during her tenure at the previous law firm, and shepherded the GIS functions until November of 2004, when she was demoted. At that time, her position was changed and the international law firm of Jones Day lost its only minority manager. Ms. Slaughter presents sufficient evidence to show that she was qualified for the position that she held, that the promotion of a white individual was discriminatory, and that the reasons for demotion are pretextual. After the lawsuit was initiated, Ms. Slaughter was retaliated

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against by being disciplined for taping a conversation and complying with discovery. Jones Day, after receiving information concerning Ms. Slaughter's activities waited over six months to discipline. A jury should be permitted to decide whether eliminating the sole minority from the position without adequate evaluation was discriminatory and whether the actions were retaliatory. The summary judgment should be denied.

## 2.

## Jones Day's Omits Important Facts

Jones Day has omitted important facts which justify denial of the motion.

1. Ms. Slaughter was the only minority GIS Manager employed by the global law firm of Jones Day prior to her demotion; Exhibit 1, (Picture Of Ms. Slaughter at GIS Managers Convention), Exhibit 2, Spread Sheet provided by Defendants.

2. Ms. Slaughter was carrying out all of the duties of GIS Manager prior to her demotion, and every individual at Jones Day considered her the GIS Manager; Exhibit 3, ISS Operations Teleconference Minutes, January 23, 2001; Exhibit 4, Deposition of Ms. Slaughter at 243-245;

3. The North American GIS Manager recommended that Ms. Slaughter be given support so that she could be evaluated properly for the position, Ms. Slaughter's supervisor refused. Exhibit 5, Email White to Richardson; Discussion concerning this email in Exhibit 6, Deposition of Mr. Richardson, pp. 7-37. [1]

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[1] The discussion concerning this email is quite instructive. In addition, the portions which are cut off are read into the record. This extensive reference is important to review due to the nature of the responses given by Mr. Richardson which demonstrate a credibility issue concerning the lack of response to this email and the lack of any sort of reaction to the email.

Jones Day has generally recited the historical facts of the circumstances, but has chosen to omit the most important facts. Jones Day's characterization of its arguments and facts as undisputed is inaccurate. The facts important to this motion are those which have been omitted.

Jones Day has also mischaracterized the evidence in the case on critical issues, which will be addressed in the argument and authority. These actions justify denial of the motion as the credibility of these statements should be evaluated by a jury.

## ARGUMENT AND AUTHORITY

### 3.

### Ms. Slaughter Was the GIS Manager

When Jones Day bought the Bayko firm and merged, an important announcement was made on January 23, 2001: "Natalie also wanted to announce we have a new IS manager in the Houston Office. **Her name is Ava Slaughter**. She is from the previous firms and is planning to join the OPS calls." See, Exhibit 5; ISS Teleconference Notes, January 23, 2001, Item Six. [emphasis supplied]

Mr. Richardson made no move to correct what he testifies under oath to be a total mistake. Exhibit 6, Deposition of Mr. Richardson, pp. 34-36. Mr. Richardson offers the excuse that he was sparing Ms. Slaughter's feelings and did not want to draw attention to the mistake. Exhibit 6 at 35.

Mr. Richardson's silence speaks volumes. Every employee in the entire firm considered Ms. Jones the GIS Manager. Her activities and job duties bear this out from January of 2001 through November of 2003.

- Ms. Slaughter was invited to attend the GIS Managers meeting held every year. See, Exhibit 1,
- Ms. Slaughter was included on every email directed to the GIS Managers. See, Exhibits 7, Group exhibit of various emails to GIS Managers; Exhibit 8, Firm Administrative Structure (Houston GIS Manager: Ava Slaughter)
- Ms. Slaughter had a "Blackberry" device, like every other manager. Exhibit 4, p. 245;
- Ms. Slaughter carried out the duties of the GIS Manager, including budgeting, purchasing, approval of invoices, and other matters. Exhibit. 4, pp. 243-245; Exhibit 9: Example of Invoice
- Every telephone directory identified Ms. Slaughter as GIS Manager. Exhibit 10, Firm Directories;
- The computer screens identifying Managers all identified Ms. Slaughter as GIS Manager. Exhibit 11, Computer Screen print outs.

For the previous six years at Bayko and for the next two years, Ms. Slaughter fulfilled the responsibility and duties of GIS Manager. In response, Jones Day states that Ms. Slaughter really was not the GIS Manager and points out that her personnel file said that she was a technology support specialist. The individuals who make this statement are the same ones accused of racial discrimination and retaliation. This is a question of fact which must be addressed by the jury. Jones Day's insertion of its head in the sand does not transform an employee from a manager to an assistant. Ms. Slaughter was the GIS Manager until she was demoted in November of 2003.

## 4.

## Serving in the Position Means the Employee is Qualified

Since Ms. Slaughter was the GIS Manager and was serving the position, Jones Day's argument that she was not qualified for the position is a question of fact which must be decided by the jury. Since Ms. Slaughter was the GIS Manager, Jones Day's decision to open the position for applications and selection of an individual outside the protected class creates a fact question on the issue of discrimination. Further, the fact that not a single other GIS manager in the entire organization is African American is indicative of systemic discrimination.

The assertion that Ms. Slaughter must prove that she is "clearly better qualified" is incorrect at this stage of the proceedings. The prima facie case's "qualification" prong is to focus solely upon the job's objective qualifications. Medina v. Ramsey Steel Co., Inc., 238 F.3d 674, 681 (5th Cir. 2001). In this regard, "the fact that [plaintiff] was hired initially indicates that [she] had the basic qualifications for the job, in terms of degrees, certificates, skills and experience." Taylor v. County BancShares, Inc., 325 F. Supp.2d 755, 769-70 (E.D. Tex. 2004) (interior quotes and citation omitted). Thus, "a plaintiff challenging his termination or demotion can ordinarily establish a prima facie case of age discrimination by showing that he continued to possess the necessary qualifications for his job at the time of the adverse action." Bienkowski v. American Airlines, Inc., 851 F.2d 1503, 1505 ($5^{th}$ Cir. 1988).

Ms. Slaughter was not terminated when the merger occurred. Nor was she terminated during the next two years, as she served at the GIS Manager. Jones Day instead invented a reason to demote her and hire a white female to fill her position.

**5.**

**Jones Day Ignored Recommendation to Use Quantifiable Performance Criteria**

Ms. Slaughter was the GIS Manager. Jones Day decided to replace her and told her that the reason she was not selected was due to the "connections" her replacement had with the firm. This is not an objective reason for selection.

The North American Manager for GIS during this period was Sara White. In February of 2003, Ms. White sent an email to Mr. Richardson, Ms. Slaughter's office manager, after Ms. White visited the Houston Office. The email reads:

> I'm waiting to discuss with George his thoughts on my involvement should you decide to hire outside for a GIS manager. I gave him a very high level overview (He understands the confidentiality of the conversation), but I want to discuss it further. **I had a thought though, after I left, abut the situation. Have you ever considered bringing in a contractor for a few months to "assist" Ava with a lot of the deskside assistance she does, especially with the troubleshooting and repairs? That would free her up to do more of the managerial and organizational things and give her the opportunity to show if she can actually do it, if she had a proper "staff." That way you'd have some quantifiable performance criteria to use when making your decision. Just a thought.** See, Exhibit 5

Mr. Richardson did not remember this email. Exhibit 6. Mr. Richardson did not remember responding to this email. Exhibit 6. Mr. Richardson did not take Ms. White's advice. Exhibit 6.

The implications of this email are clear. Mr. Richardson used subjective criteria to evaluate Ms. Slaughter. Mr. Richardson did not use objective "quantifiable performance criteria." The lack of a proper "staff" made Ms. Slaughter's job that much harder and would support the inference that if she had been properly supported, she would have not exhibited the performance issues which were subjectively used to reject her application. The criticisms used to deny Ms. Slaughter the position are directly related to this lack of support, i.e., "organization" and "appearing harried."

This email also demonstrates a credibility issue. The email contradicts the sworn interrogatory answers of Jones Day. This email clearly implies that a GIS Manager position is going to be filled. The interrogatory responses of Jones Day state that the decision was not made until September of 2003. Exhibit 12. Response to Interrogatory No. 2 ("... Mr. Hugh Whiting, Partner-in-charge of the Houston office and Kevin Richardson, the Houston Office Administrator, decided to create a GIS Manager position in or around September 2003.").

This credibility issue is critical on the question of pretext. Jones Day is concealing the actual date of the decision because it needed additional time to create more subjective evidence which would support a decision to demote Ms. Slaughter. Instead of using that time to support Ms. Slaughter, Mr. Richardson used the time to build a subjective case against her. The jury should be permitted to decide the nature of this action.

**6.**

**Subjective v. Objective Evidence**

The legal standard is clear, "[e]stablishing qualifications is an employer's prerogative,. . . but [when its decisions are challenged as discriminatory] an employer may not utilize wholly subjective standards by which to judge the employees' qualifications and then plead lack of qualification" as a defense. See Crawford v. Western Elec. Co., 614 F.2d 1300, 1315 (5th Cir. 1980). "While 'subjective employment criteria may serve legitimate functions, they also provide opportunities for unlawful discrimination.'" Taylor, 325 F. Supp.2d at 770, quoting Lindsey v. Prive Corp., 987 F.2d 324, 327 (5th Cir. 1993).

In this case, to paraphrase a famous advertising campaign, "where's the beef?" The criticisms of Ms. Slaughter's performance are as follows:

Ineffective Communication

This evidence comes from Mr. Richardson. He states in this deposition that she was ineffective at communication. See, Exhibit 6 at page 54-55 (Deposition of Richardson). Mr. Richardson was asked why she was not terminated for ineffective communication and he responded: "her performance did not merit termination." Exhibit 6 at 55. Mr. Richardson was asked for examples and the following exchanged occurred:

> Q: Can you describe for the jury any specific examples of her failure to communicate and that affecting her performance?
> A: I think it's a – I think it's a style more than it is anything very specific.
> Q: Okay. So, it's a perception on your part, is that correct?
> A: No, I think that she was not as direct at times as I would like her to be, as efficient if you will. Exhibit 6 at page 56.

Not a single specific example of "ineffective communication" was provided. Such mushy "perception" is exactly the type of subjective criteria which conceals discriminatory intent.

In fact, Mr. Richardson goes on to say that it was not really her content (in communication), "it was her personality." Exhibit 6 at page 58.

But, the evidence goes further. Ms. Slaughter is also criticized for not answering pages. Def. Ex. I, page 43, Jason Leif evaluation. In fact, Mr. Richardson had stated and emailed the entire office that the practice of paging is not the proper method of communicating, nor is email directed towards the individual. The proper method of requesting aid was a process known as "6-HELP." See, Exhibit 13 (Bates No. 1045). Not only is this an improper criticism, but the use of it by Jones Day is again, indicative of discrimination. The very next evaluation in Jones Day's evaluation package states clearly, "I can't evaluate technology because I know nothing about it. **However, I have nothing critical to say about Ava – she works very hard.**" Def. Ex. I, page 44, Michael Gibson evaluation. (Mr. Gibson is another lawyer at Jones Day).

Effectiveness of Organization

Mr. Richardson's next criticism of Ms. Slaughter involved her organizational skills. Specifically, he does not provide any example other than she had a lot of "junk" in her office. See, Def. Exhibit I, at page 39 ("Ava must get better organized to manage workflow. Get rid of the junk in her office, GIS workroom, Server room and phone room.")

In contrast, an individual that worked with Ms. Slaughter stated in his evaluation form:

> I've been dealing with a lot of information at BP, much of which as been put on CDs. From thousands of emails, to power trader audio, Ava has been a big help when it comes to compiling the information and getting multiple copies made to distribute to anyone and everyone. Whenever I've asked for her help, she's responded. She has really prove herself to be someone I could call on in a crunch for her help. See, Def. Ex. I, at page 40 (Evaluation of Aaron C. Gard on 5/17/03).

Again, the evidence which is provided to suggest that Ms. Slaughter was unqualified is contradicted directly by another individual. Mr. Richardson provides no documented examples.

With respect to the "junk," Ms. Slaughter testified that "the junk that he is speaking about was not junk. It was firm equipment that I had to maintain because I did not have an official storage area." Def. Ex. A, Part 2, Deposition of Ms. Slaughter, at page 203.

Inability to Prioritize

Mr. Richardson's final criticism is that Ms. Slaughter could not prioritize. He stated that she did not have the experience in dealing with an environment where there were so many lawyers and competing issues for her time. See, Exhibit 6, Depo of Mr. Richardson at page 65.

Actually, as Ms. White pointed out, Ms. Slaughter was not being fairly evaluated due to the fact that she did not have the proper support. See, Exhibit 5, Email of Ms. White to Mr. Richardson.

Further, Mr. Richardson completely ignores Ms. Slaughter's previous experience at Coastal Corporation, where she was dealing with over a hundred employees. Def. Exhibit I, page 24. Ultimately, Mr. Richardson's allegation that she could not handle the load is belied by the fact that Ms. Slaughter was in charge of a 70-plus person law firm, Jones Day, for at least a year.

The Crum Evaluation: Perception of the Firm

The Crum evaluation is one of the linch pins of Jones Day's defense. In it, Mr. Crum pontificates that Ms. Slaughter cannot handle the position of GIS manager, and that her participation in the calls was inadequate.

Ms. Slaughter objects to the "perception" evidence as hearsay and hearsay within hearsay without exception. The "perception" of individuals who are not identified and who are not subject to cross examination is the rankest of hearsay.

Further, Mr. Crum's evaluation makes clear that he had "limited" contact with Ms. Slaughter.[2] Def. Ex. I at page 37. Ms. Slaughter contradicts this evidence with her own personal knowledge. See, Ex. 4, Deposition of Ms. Slaughter at page 210, 211.

Therefore, the use of this evidence is suspect and indicative of discrimination. It is purely subjective on the part of Mr. Crum and the use of it by Jones Day smacks of pretext.

Discrimination Is What Happened

Ms. Slaughter stated it clearly:

> The fact that I had superior knowledge, superior experience, that I was already doing the job, and that a white female, former secretary who had never ran a technology department before, who came in and I had to train on many technologies, on many thigns regarding the infrastructure – she was not equipped. She was not qualified for the position, nor even in the – the interview process was there anything that – what would allow a individual to test qualifications. ... That's why I know I was discriminated against. Ex. 4, pp. 243-244.

**7.**

**Discipline for Being Involved in a Discrimination Case**

The only reason that Ms. Slaughter was disciplined was because she recorded a conversation related to her complaint of discrimination and because she provided documents relating to her complaint of discrimination.

The only reason that Ms. Slaughter took these actions was due to the complaint of discrimination. She tape recorded the conversation where the firm human resources manager provided her with a statement regarding his investigation and findings. She provided documents which were simply laying around the office in response to discovery requests that Jones Day sent.

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[2] Interestingly, Mr. Crum uses language which indicates that Ms. Slaughter was considered the GIS Manager of the office when he identifies Ms. Slaughter as a "peer" of the other managers. Def. Ex. I at page 37.

Therefore, "but for" her involvement in a complaint of discrimination, Ms. Slaughter would not have been disciplined.

The discipline clearly meets the test of Burlington Northern and Santa Fe Railway Co v. White , 126 S.Ct. 2405 (2006) as it is the type of action which discourages employees from protecting their rights. Ms. Slaughter, by virtue of the counseling session, is now on a possible road to termination. Jones Day has now made it clear that if she finds any form of evidence while working at the workplace, she cannot provide it to the Court or her counsel without fear of "violating a work rule." Exhibit 14, Disciplinary Action.

Further, the incredible delay in implementing the discipline is indicative of a motivation to chill Ms. Slaughter's determination to enforce her rights. The Court will recall that Ms. Slaughter continues to hold her job with Jones Day. Now, Ms. Slaughter will be faced with a conundrum if she happens to be provided with any evidence indicative of discrimination.

The conduct of Jones Day in this situation create genuine issues of material fact. The jury should decide if the discipline was retaliation.

## CONCLUSION AND PRAYER

In the entire history of Jones Day, a single African American female has been promoted to the level of GIS Manager.

Her white manager concocts flimsy and subjective criticisms of her performance in order to justify demoting her and hiring a white female. The criticisms are without merit and even when the white manager is told to give Ms. Slaughter support in order to let her properly do her job, he ignores the advice and concocts further unjustified criticisms.

Ms. Slaughter has been discriminated against and while engaging in activities related to her complaint has suffered retaliation with the threat of future retaliation. There are genuine issues of material fact on every aspect of this case. Ms. Slaughter respectfully requests that the motion for summary judgment be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

A copy of the foregoing was served in compliance with Rule 5 of the Federal Rules of Civil Procedure on the 1 day of December 2006.

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